IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH, JAIPUR

ORDER

Asstt. Commissioner, Comm. Taxes, Kota

Vs.

M/s. Associated Stone Industries

S.B. Sales Tax Revision Petition No. 18/2004

Date of order :: July 13, 2007

PRESENT
HON'BLE DR. JUSTICE VINEET KOTHARI

Mr. R.B. Mathur for the appellant-petitioner
Mr. J.N. Sharma for the respondent

BY THE COURT:

Both the counsels agree that the controversy involved in the present revision petition is covered by the decision of the Hon'ble Supreme Court in the case *CTO Vs. Rajasthan Texchem Ltd.* reported in 17 Tax Update 171, wherein the Hon'ble Supreme Court held as under :-

"In view of the fact that the diesel is being used for the purpose of running the generator set for the production of the ultimate product which is also required for the purpose of manufacturing the end product the diesel can only be termed as raw material and not otherwise. The Rajasthan Tax Board was, therefore, justified in setting aside the orders passed by the assessing authority as confirmed by the Deputy Commissioner (Appeals). To avail the concessional rate of tax under Section 10 the assessee has to satisfy 3 conditions: (a) he must be registered dealer of any raw material; (b) raw material must be used for the manufacture of goods; and (c) the said manufacture in the State should be for the purpose of sale by him within the State or in the course of inter-state trade or commerce or in the course of export outside the territory of India.

The respondent before us satisfy all the above tests and, therefore, the assessee-respondent, in our opinion, shall be entitled to such concessional rate as may be notified by the State Government."

The goods purchased in the present case at concessional rate against the declaration Form No. ST-17 by the respondent-assessee are diesel, lubricant and grease under Section 5-C of the RST Act, 1954, before the new Act, namely RST Act, 1994, came on the statute book. There is no dispute from the side of Revenue that these goods were duly included in the list of raw materials in the registration certificate of the respondent-assessee and that the entry in the registration certificate has not been deleted or modified so as to

exclude these items. In view of the aforesaid position, the controversy is no longer res integra and in view of the aforesaid decision of the Hon'ble Supreme Court, the additional tax, interest and penalty imposed upon the respondent-assessee cannot be sustained and the learned Tax Board was justified in setting aside the same by the impugned order dated 09.07.2003.

The present revision petition is devoid of merit and the same is dismissed.

(Dr.VINEET KOTHARI),J.

Pramod